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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of the Commission's Rules to)
Establish Part 27, the Wireless)
Communications Service ("WCS"))

GN Docket No. 96-228

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF
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**COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA")¹ respectfully submits its comments regarding the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.² In adopting WCS rules, PCIA urges the Commission carefully to consider their effects on a full range of statutory and Commission objectives in order to ensure that the public interest is most effectively promoted.

¹ PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

² FCC 96-441 (Nov. 12, 1996) ("*Notice*").

I. INTRODUCTION AND SUMMARY

In this proceeding, pursuant to its statutory mandate under the Omnibus Consolidated Appropriations Act of 1997,³ the Commission will reallocate the frequencies at 2305-2320 MHz and 2345-2360 MHz to wireless services, and assign the use of these frequencies through competitive bidding.⁴ These newly allocated and assigned frequencies will constitute the Wireless Communications Service ("WCS"). In establishing this new service, the Commission seeks comment on the following broad categories of spectrum allocation policy: (1) the reallocation of spectrum for WCS; (2) a licensing plan for WCS; (3) the use of competitive bidding; (4) the promotion of efficient spectrum use; (5) public safety needs; (6) service and technical rules; and (7) auction procedures.

PCIA does not believe that unrestricted spectrum flexibility will advance consumer interests. The Commission's proposal for nearly unlimited service opportunities in the WCS will actually work to the detriment of the objectives being pursued by Congress and the Commission. Instead, rather than replicate already available commercial mobile radio services ("CMRS"), PCIA recommends that the Commission use the WCS spectrum to authorize a high-speed data service.

³ P.L. 104-28, 110 Stat. 3009 (1996) ("Appropriations Act").

⁴ See 47 U.S.C. § 309(j).

In addition, license spectrum allocations should be based on paired 5 MHz blocks, (for a total of 10 MHz), with an opportunity for auction bidders to aggregate the spectrum blocks. If a high-speed data service is deployed in the WCS, neither build-out requirements nor the CMRS spectrum cap are appropriate. If CMRS is to be provided on the WCS spectrum, however, regulatory parity requirements dictate that WCS operators be governed by comparable build-out requirements and the CMRS spectrum cap.

PCIA further believes that the licensing scheme developed for WCS should affirmatively create a wide variety of opportunities for different types of entities to bid on licenses, thereby creating a highly competitive market in which customers are offered an array of innovative services. Consistent with these principles, PCIA opposes the issuance of nationwide licenses and supports the use of Major Trading Areas ("MTAs") to define the WCS service areas.

Nationwide licenses were previously considered and rejected for broadband Personal Communications Services ("PCS") for good and sufficient reasons that have even greater relevance now. First, nationwide licensing will restrict the number of entities that are financially capable of bidding on WCS licenses and constructing the networks necessary to serve such a large area. Second, national service areas will likely result in unserved areas and delays in providing service to rural and less densely populated or traveled areas, notwithstanding partitioning or disaggregation rights. Third, the issuance of nationwide licenses at this time will undermine the reasonable

expectations of those entities that have already invested in MTA- and Basic Trading Area ("BTA")-based PCS licenses, and will make it more difficult for such licensees to secure financing for network build-out. Finally, based on past experiences, PCIA believes the Commission will end up with a smaller auction revenue yield than otherwise possible with smaller service areas.

MTAs, in contrast, avoid the pitfalls of nationwide service areas while achieving the Commission's goals. MTAs have a proven track record of permitting both entrepreneurial and large carrier participation. In addition, they match wireless service offerings with consumer demand and do not undermine investments needed for previously auctioned wireless services.

PCIA recognizes that the Commission is operating on a short time table imposed by Congress to license WCS spectrum. Nonetheless, PCIA cautions the Commission not to design the WCS rules merely to simplify and expedite WCS auctions. Rather, the action taken in this proceeding must be guided by the critical public interest considerations reflected in statutory statements and amplified in recent years by the Commission.

II. THE FREQUENCIES ALLOCATED FOR THE WCS SHOULD BE LICENSED FOR A FOCUSED SET OF SERVICES THAT DOES NOT INCLUDE CMRS

PCIA disagrees with the Commission's proposal to "permit the provision of a broad range of fixed, mobile, radiolocation and broadcasting-satellite services" in the

2305-2320 and 2345-2360 MHz bands.⁵ Failure to provide the telecommunications industry with some concrete guidance as to which service offerings are permissible will result in the failure of manufacturers -- either at all or on a cost-effective basis -- to produce the equipment necessary for the provision of any new service. In addition, permitting the indiscriminate use of these frequencies for a broad range of services, including CMRS, is contrary to the Commission's statutory mandate "to promote the most efficient use of the spectrum."⁶

Preliminarily, it is important for the Commission to focus any spectrum allocation on a limited number of services in order to foster the most efficient use of this spectrum. As described in the *En Banc Hearings on Spectrum Policy*, if the Commission's list of permissible service offerings for any given block of spectrum is insufficiently focused, equipment manufacturers will be unable to develop sensible business plans to guide their research and development efforts.⁷ Such manufacturers may fail entirely to develop the equipment necessary to utilize the WCS spectrum. Alternatively, the wide range of potential service offerings may lead to costly development activities spread across multiple service options, with the result that

⁵ Notice, ¶ 9.

⁶ Appropriations Act § 3001(b)(1).

⁷ See Testimony of Motorola, Inc. in *En Banc Hearing on Spectrum Policy* at 8 (filed Feb. 20, 1996) ("FCC spectrum allocation decisions are essential to providing the basis for substantial research and development Certainty and stability in FCC allocation policies are also critical to allowing manufacturers to commit resources to research and development").

equipment will not be cost-effective for potential service providers. In either case, potential operators will be seriously hindered in bringing service to the public on the WCS spectrum.

Further, permitting WCS licensees to offer CMRS at this time represents an inefficient use of this spectrum. The CMRS industry recently has undergone a tremendous increase in the number of allocations in any given service area. Given the number of new licensees, many new entrants are already facing a shortage of operating capital.⁸ In particular, the PCS industry is currently at a critical stage in its development in that licenses have been auctioned for record amounts, but systems are not yet built out. Having recently submitted their final down payments, many C block PCS licensees now must raise additional capital to construct facilities. This task, already made difficult by the substantial competition in the wireless marketplace, will become next to impossible if these licenses become devalued as a result of the issuance of competing nationwide licenses.

The American public thus has yet to benefit from most of the new service offerings that are expected -- by consumers, the Commission, and service providers -- to arise out of the PCS auctions. If the Commission were to auction more spectrum for CMRS use at this time, then the present group of licensees and auction winners would

⁸ See Dan Shea and Jason Myers, *Navigating Wireless Waters*, Telephony, Aug. 5, 1996, at 12 ("The [PCS licensees] that don't band together are going to have a great deal of difficulty getting the financing they need") (quoting Lynn Langford, President of Mountain Solutions, a C block licensee).

find their spectrum devalued. This would make it even more difficult to raise the capital necessary to build out their systems and begin providing service to the public.

Thus, the CMRS marketplace is already saturated with current and potential providers.⁹ The challenge facing the Commission is the creation of an environment in which these providers can establish their systems and initiate service to the public.

PCIA respectfully suggests that super-saturating the marketplace with more CMRS providers and creating a credit crunch will not serve the public interest. There is a real risk that the goals the Commission has sought to achieve with its PCS licensing rules could be lost if new entrants -- in both PCS and WCS -- cannot obtain the resources necessary to establish viable systems. Until the PCS industry is on its feet, built out, and serving the public, the Commission should find uses other than CMRS for the valuable spectrum that Congress has tasked it with auctioning.

Rather than licensing the WCS spectrum to be used for CMRS, the Commission should consider dedicating this spectrum to high-speed, broadband data services. In contrast to the vast amount of spectrum available for two-way voice services such as

⁹ See Carl Robert Aron, *The Challenges of the Wireless Ice Age*, Business Communications Review, Vol. 25, No. 10, at 40 (Oct. 1995) ("It seems . . . likely that between three and five independent PCS operators will join the two cellular carriers in each service territory. The total number of facilities-based competitors could rise from two to between four and seven (two cellular, four PCS, one ESMRS), a total that does not include resellers"). See also *Annual Report and Analysis of Competitive Market Conditions With Respect To Commercial Mobile Services*, 10 FCC Rcd 8844, 8871-72 (1995) (First Report) (broadband PCS, interconnected SMRs, narrowband PCS, unlicensed PCS, satellite-based systems, and other future services are potential sources for competition in the mobile marketplace).

CMRS, there is little spectrum currently available for services such as wireless access to the Internet and other data-intensive services.¹⁰ If the trends in wireline telephony are a fair indicator of the trends in wireless telephony -- and there is little reason to think that they are not -- then wireless access to the Internet will soon be in great demand. By creating such a wireless data service, the Commission will provide the public with a much needed service.¹¹

III. OTHER WCS POLICIES SHOULD BE DESIGNED TO PROMOTE COMPETITION AND REGULATORY PARITY AMONG COMPETING SERVICES

The Commission requests comment on a number of other issues related to the proposed WCS, including the amount of spectrum to be allocated to each license, the necessity of build-out rules, and the applicability of the CMRS spectrum cap.

¹⁰ See, e.g., *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands*, Notice of Proposed Rulemaking and Order, FCC 95-500, ¶¶ 10-15 (Dec. 15, 1996).

¹¹ The Commission might also consider allocating a portion of the WCS spectrum for use by public safety radio services. See *Notice*, ¶ 21. Pursuant to Section 3001(b)(2) of the Appropriations Act, PCIA believes the Commission has the authority to make such a public safety allocation.

A. The Commission Should Allocate Paired 5 MHz Blocks of Spectrum Per WCS License

The *Notice* seeks comment on the appropriate amount of spectrum to be allocated to each WCS license, and whether such spectrum should be paired or unpaired.¹² Consistent with PCIA's recommendation that the Commission adopt a high-speed data service for the WCS, the Commission should allocate paired 5 MHz channels (for a total of 10 MHz) for each license. This would provide adequate spectrum for the two-way communications access necessary to allow a high-speed service to flourish. Auction bidders, however, should be allowed to aggregate spectrum should they consider 10 MHz to be inadequate to accommodate their service plans. In general, though, PCIA expects that the presence of three wireless data providers in each service area, along with operators in other frequency bands, will promote a high level of competition.

In the event the Commission rejects the proposal for high-speed data operations in the WCS, PCIA believes that the spectrum allocated to each WCS license should remain the same. The Commission concluded during the PCS proceedings that 10 MHz was sufficient to permit PCS licensees to establish viable systems.¹³ There is no

¹² *Notice*, ¶¶ 11-12.

¹³ *See Amendment of the Commission's Rules To Establish New Personal Communications Services*, 8 FCC Rcd 7700, 7726 (1993) ("*PCS Second Report and Order*"). More recently, in its proceeding to permit spectrum disaggregation in CMRS, the Commission tentatively concluded that even less spectrum may be needed, depending upon the plans of an operator for its service offerings.

reason for the Commission to conclude that larger blocks of spectrum are required in the WCS.

B. Build-Out Rules Are Not Necessary for a Data Service But Should Be Retained If CMRS Is Permitted in the WCS

The *Notice* suggests that build-out requirements may not be necessary in the WCS.¹⁴ To the extent that high speed data is deployed in the WCS, PCIA generally concurs with the Commission that construction benchmarks may not be "necessary to meet Section 309(j)'s objectives regarding warehousing and rapid deployment,"¹⁵ particularly if MTAs are used as the basis for licensing. Deployment of high-speed data services will be market-driven as operators seek to respond to growing consumer needs.

In contrast, if CMRS operations are permitted in the WCS, such licensees should be subject to build-out requirements comparable to other CMRS operators. This result is required by the Congressionally-mandated parity of treatment of CMRS providers,¹⁶ as implemented by the Commission. A failure to adopt build-out requirements in the WCS could give providers of CMRS in this new spectrum competitive advantages resulting solely from disparities in regulatory treatment. Such a

¹⁴ See *Notice*, ¶¶ 56-61.

¹⁵ *Id.*, ¶ 58.

¹⁶ See 47 U.S.C. § 332(c)(1)(A).

result is clearly inconsistent with prior statements of Commission policy and the public interest.

**C. The CMRS Spectrum Cap Should Apply in the WCS
Only if CMRS Operations Are Permitted**

The *Notice* requests comment on whether the CMRS spectrum cap should be applied to the WCS.¹⁷ To the extent the WCS is used to provide CMRS and so long as the cap remains in place with respect to any other CMRS services, PCIA firmly believes that regulatory parity requires that the CMRS cap be extended to the WCS as well. All competitors in CMRS must be placed on comparable footing and should be subject to the same service rules in order to permit the marketplace to function equitably and effectively.

In contrast, the CMRS spectrum cap is not relevant or necessary if the Commission deploys high-speed data services in the WCS. In that event, CMRS service providers should be permitted to obtain WCS spectrum without any spectrum limitation constraints.

¹⁷ *Notice*, ¶ 25.

**IV. WCS SHOULD NOT BE LICENSED ON A NATIONWIDE BASIS, BUT
INSTEAD SHOULD RELY ON MTA-DEFINED SERVICE AREAS**

In its *Notice*, the Commission expressed a belief that "licensing the WCS spectrum on the basis of large geographic service areas would facilitate operation of the broadest possible range of new communications services in the WCS spectrum and would promote their introduction in the most rapid and efficient manner."¹⁸ The Commission requested comment on whether WCS should be licensed based on MTAs as defined for narrowband and broadband Personal Communications Services ("PCS"), on regional service areas similar to those defined for narrowband PCS, or on a nationwide basis.

**A. The Commission Should Not Adopt Nationwide Service
Areas for WCS**

PCIA strongly believes use of nationwide licensing areas for WCS represents poor public policy.¹⁹ Indeed, the Commission previously considered and rejected nationwide service territories in the broadband PCS context as contrary to the public interest. The same is true in this case. In fact, the arguments that PCIA [then Telocator] set forth in its opposition to national licenses in the PCS proceeding apply

¹⁸ *Notice*, ¶ 10.

¹⁹ See Ex Parte Letter from E. Jay Kitchen, President, Personal Communications Industry Association, to Reed E. Hundt, Chairman, Federal Communications Commission (filed Nov. 22, 1996).

equally to this context -- namely, that a nationwide allocation would severely restrict entry opportunities, lessen competition in technical configurations and service arrangements, and potentially delay service introduction in broad areas of the country.²⁰

First, a nationwide licensing scheme will severely limit the number of service providers that may obtain licenses. Moreover, it is likely that far fewer entities will even attempt to participate in a WCS based on nationwide service areas given the high costs of obtaining such licenses and then building out the necessary network. These monetary barriers to entry will virtually ensure that only large and well financed entities can even contemplate bidding on these licenses. Given the preclusionary effects of a nationwide license territory on entry opportunities, such service areas are ill-suited to the Commission's statutory goals of promoting "competition" and ensuring the accessibility of "new and innovative technologies."²¹ Further, nationwide allocations are contrary to the Commission's efforts to afford opportunities for small businesses. Indeed, such license areas make virtually inevitable the grant of authorizations to large

²⁰ See Comments of Telocator on 1850-1990 MHz Personal Communications Services, *In the Matter of Amendment of the Commission's Rules To Establish Personal Communications Services*, GEN Docket No. 90-314, at 7-10 (filed Nov. 4, 1992); Reply Comments of Telocator on 1850-1990 MHz Personal Communications Services, *In the Matter of Amendment of the Commission's Rules To Establish Personal Communications Services*, GEN Docket No. 90-314, at 10-11 (filed Jan. 7, 1993).

²¹ 47 U.S.C. § 309(j)(3)(B).

business operations with ready access to substantial resources, accompanied by no realistic opportunities for new or small entrants.

Second, national licenses likely would promote inefficient use of the spectrum and slow the deployment of WCS networks, particularly in rural areas. Again, this result is contrary to the Commission's statutory mandate to promote "rapid deployment" of new technologies, especially in "rural areas."²² For example, given the level of investment required to build-out service, nationwide licensees may take years to implement service in low density population territories and low income areas. This would tie up spectrum and make it unavailable for an entrepreneur or other service provider who might use those frequencies to provide service specifically tailored to meet the needs of residents in such areas. In effect, as the size of the licensing area grows, the incentive and ability to rapidly provide ubiquitous service throughout the entire authorized operating area drops precipitously. This inefficient spectrum usage is also contrary to the Appropriations Act's directive to "promote the most efficient use of the spectrum."²³

Third, grant of nationwide licenses would undermine the reasonable expectations of investors that have already committed substantial funds to wireless systems based upon MTAs and BTAs. Adoption of such a service area changes certain basic assumptions under which hundreds of broadband PCS applicants bid on and acquired

²² *Id.* § 309(j)(3)(A).

²³ Appropriations Act § 3001(b)(1).

their licenses. As stated previously, C block PCS licensees will encounter a great deal of difficulty in raising sufficient capital to build out their networks if the Commission issues nationwide licenses that devalue the existing PCS licenses. Moreover, if the Commission chooses to do so, application of the current 45 MHz CMRS spectrum cap may, depending upon the size of the spectrum allocation, preclude broadband PCS licensees and many other providers of communications services from bidding on these national licenses. Yet, had they known a nationwide license would soon be available, these existing licensees may have refrained from bidding on individual MTA and BTA authorizations.

Finally, experience has shown that greater revenue is generated by auctioning smaller service areas than by auctioning a nationwide allocation. For example, bidders in the narrowband PCS auction paid more to aggregate regional licenses than they did for the nationwide frequency authorizations. In addition, C block bidders bid more money for their 30 MHz BTA allocations than Block A and B bidders did for their 30 MHz MTA allocations. Thus, to the extent that the Commission seeks to maximize revenues from the WCS auctions, adoption of nationwide service territories likely would not achieve this goal.

Finally, the *Notice* identifies several benefits to be derived from nationwide service areas -- facilitating nationwide roaming and interoperability of services, avoiding the need for negotiating roaming agreements, maximizing economics of scale,

and minimizing the cost of providing service and the cost of equipment.²⁴ These advantages clearly are outweighed by the serious disadvantages associated with national service allocations. In fact, the competitive and public interest harms resulting from nationwide WCS licenses are so serious as to require rejection of such a plan, given the nature of the possible benefits. The mere fact that nationwide service areas are likely to simplify and expedite the WCS auction should not be allowed to overcome the results of a thorough public interest review.

B. Adoption of MTA-Based Service Areas for WCS Will More Effectively Further the Public Interest

PCIA urges the Commission, in lieu of nationwide service areas, to adopt MTAs as the basis for licensing WCS operations. The *Notice* itself recognizes that MTA-based service areas "would provide certain economics of scale and scope needed for the development of low cost equipment, would promote the development [of] roaming within large geographic areas and would facilitate interoperability."²⁵ Indeed, MTAs will largely achieve the advantages identified by the *Notice* for nationwide allocations while substantially ameliorating the harms associated with national WCS licenses.

²⁴ *Notice*, ¶ 10.

²⁵ *Id.*, ¶ 10 (citing *PCS Second Report and Order*, 8 FCC Rcd at 7733).

For example, MTA-based licenses will increase the opportunities for entry into WCS simply because more authorizations will be granted. Moreover, because individual network costs will be decreased, more entities are likely to be able to have access to the necessary resources to participate in the auction, to obtain licenses, and to implement the contemplated system. In addition, an MTA-based approach can be expected to permit entrepreneurs and smaller companies increased opportunities to participate in this new service.

The use of MTAs is more likely to promote ubiquitous service coverage at an earlier date. The eventual WCS licenses will have a smaller geographic area on which to focus their resources. Entrepreneurs will have an enhanced opportunity to obtain licenses to provide specifically targeted service offerings. As a result, the spectrum allocated for WCS is more likely to be efficiently used throughout all regions of the United States.²⁶

Adoption of MTAs also takes into account the legitimate business and regulatory decisions made by existing licenses of wireless services. MTA-based service areas will place WCS entrants on more comparable footing with recent PCS licenses and bidders, with less dramatic impact on the ability of the latter set of operators to obtain the resources necessary to build-out networks to provide services to the public consistent with Commission expectations.

²⁶ To the extent a particular entity seeks to provide service over a larger area, it can aggregate MTA-based service areas through the auction process.

MTAs are more appropriately sized service areas than territories based on smaller boundaries, such as BTAs or Metropolitan Statistical Areas ("MSAs"). The disadvantages of smaller service areas, including reduced economies of scale and the increased number of roaming agreements needed, outweigh the advantages that might be associated with such areas.

Overall, MTA-based service areas for the WCS reflect the best balancing of advantages and disadvantages. Adoption of MTAs for the award of WCS licenses will enhance the Commission's ability to achieve the many competing objectives guiding its action in this proceeding.

C. While the Commission Should Permit Spectrum Disaggregation, Geographic Partitioning, and Franchising, These Opportunities Do Not Resolve the Problems Associated With Nationwide Service Areas

The *Notice* proposes "to allow WCS licensees to disaggregate portions of their assigned spectrum and partition geographic service areas through a transfer of FCC license authority."²⁷ The *Notice* also contemplates that "licensees would be permitted to 'franchise' portions of their spectrum and geographic service areas on a leased basis, where the WCS licensee would retain ultimate responsibility for meeting interference

²⁷ *Notice*, ¶ 16.

and other licensing requirements."²⁸ The Commission indicates that these actions would further the achievement of the Section 309(j)(3)(B) requirements that

the Commission shall seek to promote economic opportunity and competition and ensure that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.²⁹

PCIA endorses Commission adoption of spectrum disaggregation, geographic partitioning, and franchising policies for the WCS consistent with its views in the pending proceeding to permit CMRS spectrum disaggregation and geographic partitioning.³⁰ Such provisions, however, do not adequately address the problems identified above associated with nationwide service territories. There is no guarantee that a nationwide licensee would agree to enter into any of the arrangements proposed by the Commission. Achievement of the statutory objectives would be left to the whims of the auction winners. Regardless of the Commission's expectations and desires, the practical effect of nationwide license grants could well be reduced

²⁸ *Id.*

²⁹ *Id.*

³⁰ See Comments of the Personal Communications Industry Association, WT Dkt. No. 96-148 (filed Aug. 15, 1996); Reply Comments of the Personal Communications Industry Association, WT Dkt. No. 96-148 (filed Aug. 30, 1996).

competition; fewer entrants; fewer opportunities for entrepreneurs, rural telephone companies, and women and minority group businesses; and potentially large areas of the country lacking timely access to WCS offerings.

The Commission can more effectively implement the statutory requirements by adopting an *initial* licensing plan designed with those goals in mind. To that end, the Commission should reject nationwide service areas and instead incorporate MTA-based service areas into its WCS rules.


V. CONCLUSION

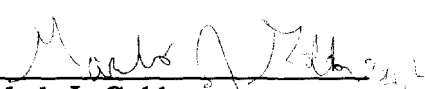
Despite the statutory time constraints facing it, PCIA urges the Commission carefully to consider the design of its WCS rules. The need for a speedy conclusion of auctions cannot be permitted to overcome the effective furtherance of the public interest. To that end, instead of an open-ended service allocation, the Commission should focus the permissible service offerings on high-speed data and exclude CMRS offerings from the WCS spectrum. Remaining rules should be tailored to support achievement of a competitive marketplace that will effectively serve the needs of the

public. Finally, the Commission should reject nationwide licensing and instead adopt MTA-based service areas.

Respectfully submitted,

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